(2023) 01 NCLT CK 0035

In the National Company Law Tribunal

Case No : CA/544/2022 & C.A. (CAA)/131/MB /2022

Viburnum Tapes Private Limited Vs

Date of Decision : 20-01-2023

Acts Referred:

Companies Act, 2013 — Section 66, 230, 230(5), 232
Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 — Rule 8

Citation : (2023) 01 NCLT CK 0035

Hon'ble Judges : P. N. Deshmukh, Member (J);Shyam Babu Gautam, Member (T)

Bench : Division Bench

Advocate : Ajit Singh Tawar

Final Decision : Disposed Of

Judgement

Shyam Babu Gautam, Member Technical

UPON READING the Application along with the Notice of Admission dated 30th day of April, 2022 of Mr. Sunil Agarwal, Authorized Signatory of the Applicant Companies, in support of Notice of Admission along with Application and Annexures therein referred to, IT IS ORDERED THAT:

1. This Court is convened by video conferencing. The Applicant has filed CA/544/2022 for permitting the amendments as mentioned in Paragraph 5 herein above to the Scheme of Amalgamation, the same has been allowed and the modified Scheme of Amalgamation has been taken on record. Accordingly, CA/544/2022 is allowed as disposed of.

2. The Learned Counsel for the Applicant Companies submits that the present Scheme is a Scheme of Amalgamation of VIBURNUM TAPES PRIVATE LIMITED, the Transferor Company with LOTUS TAPES (INDIA) PRIVATE LIMITED, the Transferee Company.

3. The Learned Counsel for the Applicant Companies submits that the Applicant Company No. 1 was incorporated to carry on the business of adhesives, adhesive tapes, label stocks, and labels, leaflets, anticorrosive coatings, etc.

4. The Learned Counsel for the Applicant Companies submits that the Applicant Company No. 2 is engaged in the business of manufacturing of various types of Labels, Die cuts, Sliced rolls & Sub-assemblies made of Adhesive tape, Fabric & Films and predominantly specializes in conversion of adhesive tapes, labels, fabrics, films & papers, rules & foams used in auto-ancillary industry and telecom equipment industry.

5. The Learned Counsel for the Applicant Companies submits that the Board of Directors of the Applicant Companies in their respective meetings held on 14thday of April, 2022 have approved the proposed Scheme with the Appointed Date as 7th day of October, 2021. The Board Resolution approving the Scheme for the Applicant Company No. 1 and Applicant Company No. 2 are annexed as Exhibit 'H' and Exhibit 'I' respectively to the Company Scheme Application.

6. The Appointed Date for the Scheme of Amalgamation is 7th day of October, 2021.

7. The Authorized, Issued, Subscribed and Paid-up Share Capital of the Applicant Companies as on 31st day of January, 2022 is as under:

i. The Authorized Share Capital of the Applicant Company No. 1 is Rs. 7,50,00,000/-divided into 15,00,000 Equity shares of Rs. 10/- each and 6,00,000 7.5% Optionally convertible Preference Shares of Rs. 100/- each. Issued, Subscribed and Paid-up Share Capital of Applicant Company No. 1 is Rs. 7,50,00,000/- divided into 15,00,000 Equity shares of Rs. 10/- each fully paid up and 6,00,000 7.5% Optionally convertible Preference Shares of Rs. 100/- each.

ii. The Authorized Share Capital of the Applicant Company No. 2 is Rs. 40,00,000/-divided into 40,000 Equity Shares of Rs. 100/- each. Issued, Subscribed and Paid-up Share Capital of the Applicant Company No. 2 is Rs. 39,05,000/- divided into 39,050 Equity Shares of Rs. 100/- each fully paid up.

8. The Learned Counsel for the Applicant Companies further submits that the rationale for the Scheme is as follow:

The background and circumstances which justify the said arrangement are inter alia as follows:

a. VTPL being a Special Purpose Vehicle (SPV) was looking for investments and strategic alliances in entities engaged in business of manufacturing of various types of labels, die cuts, Sliced rolls made of adhesive tapes, Fabric & Films. In line with this objective, the Transferor Company identified and entered into discussion with the Transferee Company for acquisition of its tapes business. Post discussions and negotiations, management of VTPL agreed to acquire 100% stake in LTIPL vide Share Purchase Agreement (SPA) dated 07th October, 2021.

b. Management of Companies envisaged to integrate the activities of VTPL and LTIPL to achieve various benefits including inter-alia, business synergies, market access, unified platform for growth, access to LTIPL's customers and cost effectiveness. Further, the integration of businesses would help to achieve the below objectives:

i. LTIPL is a wholly owned subsidiary of VTPL, so consolidation would lead to more efficient utilization of capital for enhanced development and growth of the consolidated business in one entity;

ii. It is expected that such consolidation of entities will provide operational synergies which in turn will eliminate inefficiencies and will streamline corporate structure and cash flows;

iii. A single operating entity will result in better centralized management and oversight, cost efficiencies and supporting the group competitive growth;

iv. The proposed amalgamation shall result into elimination of duplication of work, rationalization of expenses, economies of scale;

v. The proposed amalgamation will eliminate a multi-layered structure and reduce managerial overlap, which are necessarily involved in running multiple entities. LTIPL is a wholly owned subsidiary of VTPL, and all the shares of LTIPL are presently held by VTPL in its own name and as such this Scheme envisages transfer of the entire undertaking of Transferor Company to the Transferee Company;

9. The Learned Counsel for the Applicant Companies submits that the Applicant Companies had filed a Company Application i.e., CA/544/MB/2022 seeking modification to the scheme and the modifications sought under CA/544/MB/2022 were allowed and the Applicant Companies were directed to serve the amended scheme on all concerns. The Applicant Companies hereby undertake to serve the said copy of the amended scheme upon all concerns in compliance to the order dated 17th October, 2022.

10. The Learned Counsel for the Applicant Companies submits that the modified consideration clause is as follows:

Upon the coming into effect of this Scheme and in consideration of the transfer and vesting of the Undertaking of Transferor Company in the Transferee Company, in terms of this Scheme, the shareholders of Transferor Company would be allotted the shares of the Transferee Company, whose names appear in the Register of Members of the said Transferor Company on a date to be fixed by the Board of Directors of the Transferee Company or to such of their respective heirs, executors, administrators or other legal representatives or other successors in title as may be recognized by the Board of Directors or committee of the Transferee Company, as per below details:

To Equity Shareholders of VTPL:

100% shares of Transferee Company are held by Transferor Company. Upon merger, the shares held by Transferor Company in the Transferee Company shall stand cancelled. It has been decided that Transferee Company shall issue and allot 3(Three) fully paid equity share of face value Rs. 100/- (Hundred) each against every 1,000(Thousand) fully paid equity shares of Rs. 10/- (Ten) each to the shareholders of the Transferor Company.

On basis of the above exchange ratio, 4,500 (Four thousand five hundred) fully paid-up equity shares of Rs. 100/- each in Transferee Company shall be issued for 15,00,000 (Fifteen Lakhs) fully paid-up equity shares of Rs. 10/- (Ten) each in Transferor Company.

To Optionally Convertible Preference Shares (OCPS) Holders of VTPL:

It has been decided that Transferee Company shall issue and allot 3(Three) fully paid-up 7.5% Optionally Convertible Preference Shares of face value Rs 100/- (Hundred) each against every 100(Hundred) 7.5% Optionally Convertible Preference Shares of Face Value Rs 100/- (Hundred) each to the shareholders of the Transferor Company.

On the basis of the above exchange ratio, 18,000 (Eighteen Thousand) 7.5% Optionally Convertible Preference Shares of Rs. 100/- (Hundred) each in Transferee Company shall be issued for 6,00,000 (Six Lakhs) 7.5% Optionally Convertible Preference Shares of Rs. 100/- (Hundred) each in Transferor Company.

11. The Learned Counsel for the Applicant Companies submits that as on 31st day of January, 2022, there are 4 (Four) Equity shareholders and 8 (Eight) Preference shareholders in Applicant Company No. 1, all the Equity and Preference Shareholders of the Applicant Company No. 1 have given their consent in writing to the proposed modified Scheme. The revised Consent Affidavits of the Equity and Preference Shareholders are annexed as Annexure 'B1-B12' to the Company Application/544/2022. In view of the Consent Affidavits filed by all the Equity and Preference Shareholders of the Applicant Company No. 1, the meetings of the Equity and Preference Shareholders of the Applicant Company No. 1, for the purpose of considering and, if thought fit, approving the proposed Scheme with or without modification(s) are hereby dispensed with.

12. The Learned Counsel for the Applicant Companies submits that as on 31st day of January, 2022, there are 2 (Two) equity shareholders in Applicant Company No. 2, all the Equity Shareholders of the Applicant Company No. 2 have given their consent in writing to the proposed modified Scheme. The revised Consent Affidavits of the equity shareholders are annexed as Annexure 'C1-C2' to the Company Application/544/2022. In view of the Consent Affidavits filed by all the Equity Shareholders of the Applicant Company No. 2, the meetings of the Equity Shareholders of the Applicant Company No. 2, for the purpose of considering and, if thought fit, approving the proposed Scheme with or without modification(s) are hereby dispensed with.

13. The Learned Counsel for the Applicant Companies submits that as on 31st day of January, 2022, the Applicant Company No. 1 does not have any Secured

Creditors, therefore, the question of convening and holding of the meeting of Secured Creditors of the Applicant Company No. 1 does not arise. The Auditor's Certificate verifying NIL list of Secured Creditors of the Applicant Company No.1 is annexed as "Exhibit M" to the Company Scheme Application.

14. The Learned Counsel for the Applicant Companies submits that the Applicant Company No. 2 has 3 (Three) Secured Creditors aggregating to Rs. 4,20,91,320/- (Rupees Four Crores Twenty Lakhs Ninety-One Thousand Three Hundred and Twenty Only) as on 31st day of January, 2022. It is submitted that as far as the rights of Secured Creditors of the Applicant Companies are concerned, they will not be affected by the proposed Scheme of Amalgamation since post-Scheme, the assets of the Applicant Company No.2 will be sufficient to discharge its liabilities and further, it also does not involve any compromise or arrangement with any creditors of the Applicant Company No.2, the meetings of the Secured Creditors of the Applicant Company No.2, for the purpose of considering and, if thought fit, approving the proposed Scheme with or without modification(s) are hereby dispensed with. The Applicant Company No.2 undertakes to serve notice of application to all its secured creditors as on 31st day of January, 2022. The Auditor's Certificate verifying the list of Secured Creditors of the Applicant Company No.2 is annexed as "Exhibit M" to the Company Scheme Application.

15. The Learned Counsel for the Applicant Companies submits that the Applicant Company No. 1 has 4 (Four) Unsecured Creditors aggregating to Rs. 6,85,00,000/- (Rupees Six Crores Eighty Five Lakhs Only) as on 31st day of January, 2022. It is submitted that as far as Unsecured Creditors of the Applicant Company No. 1 are concerned, they are in the nature of normal course of business and that the Unsecured Creditors of the Applicant Company No. 1 are not in any manner affected by the Scheme nor is there any compromise or arrangement envisaged in the Scheme with the Unsecured Creditors of the Applicant Company No. 1. Further, the Scheme does not contemplate any variation in the rights of the Unsecured Creditors of the Applicant Company No. 1 in any manner whatsoever and that there is no compromise or arrangement with the Unsecured Creditors of the Applicant Company No. 1 and most of them are in the nature of creditors arising from normal course of business, thus the meetings of the Unsecured Creditors of the Applicant Company No.1, for the purpose of considering and, if thought fit, approving the proposed Scheme with or without modification(s) are hereby dispensed with. The Applicant Company No.1 undertakes to serve notice of application to all its unsecured creditors as on 31st day of January, 2022. The Auditor's Certificate verifying the list of Unsecured Creditors of the Applicant Company No.1 is annexed as "Exhibit N" to the Company Scheme Application.

16. The Learned Counsel for the Applicant Companies submits that the Applicant Company No. 2 has 42 (Forty-two) Unsecured Creditors aggregating to Rs. 1,80,13,375/- (Rupees One Crore Eighty Lakhs Thirteen Thousand Three Hundred and Seventy-Five Only) as on 31st day of January, 2022. It is submitted

that as far as Unsecured Creditors of the Applicant Company No. 2 are concerned most of them are in the nature of loan/sundry/trade creditors for activities of the Applicant Company No. 2 and that the Unsecured Creditors of the Applicant Company No. 2 are not in any manner affected by the Scheme nor is there any compromise or arrangement envisaged in the Scheme with the Unsecured Creditors of the Applicant Company No. 2. Further, the Scheme does not contemplate any variation in the rights of the Unsecured Creditors of the Applicant Company No. 2 in any manner whatsoever and upon the Scheme becoming effective, the Transferee Company shall continue with its existence and shall accordingly continue to meet the liabilities of its creditors as they arise in the normal course of business and there is no compromise or arrangement with the Unsecured Creditors of the Applicant Company No. 2, thus the meetings of the Unsecured Creditors of the Applicant Company No.2, for the purpose of considering and, if thought fit, approving the proposed Scheme with or without modification(s) are hereby dispensed with. The Applicant Company No.2 undertakes to serve notice of application to all its unsecured creditors as on 31st day of January, 2022. The Auditor's Certificate verifying the list of Unsecured Creditors of the Applicant Company No.2 is annexed as "Exhibit O" to the Company Scheme Application.

17. The Applicant Company No.1 is directed to serve notice upon the – (1) Central Government through the office of Regional Director (Western region), Mumbai; (2) Registrar of Companies, Maharashtra, Mumbai; (3) Income Tax Authority within whose jurisdiction the Applicant Company No.1 is assessed to tax, bearing PAN number AAICV2574K having IT ward jurisdiction DCIT, Circle 14(1)(2), Mumbai and (4) Official Liquidator, High Court Bombay, pursuant to Section 230(5) of the Companies Act, 2013 and Rule 8 of the Companies (Compromises Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from such authorities within 30 days of the date of receipt of the notice, it will be presumed that they have no objection to the proposed Scheme.

18. The Official Liquidator may submit his representations, if any, within a period of thirty (30) days from the date of the receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served upon the Transferor Company.

19. The Applicant Company No.2 is directed to serve notice upon the – (1) Central Government through the office of Regional Director (Western region), Mumbai; (2) Registrar of Companies, Maharashtra, Pune; (3) Income Tax Authority within whose jurisdiction the Applicant Company No.2 is assessed to tax, bearing PAN number AABCL0595K having IT ward jurisdiction DCIT, Circle 7, Pune; and (4) GST Authority within whose jurisdiction the Applicant Company No.2 is assessed to GST, bearing GSTIN 27AABCL0595K1Z9 having jurisdiction CGST Pune -I Commissionerate, Pune, pursuant to section 230(5) of the Companies Act, 2013 and Rule 8 of the Companies (Compromises Arrangements

and Amalgamations) Rules, 2016. If no response is received by the Tribunal from such authorities within 30 days of the date of receipt of the notice, it will be presumed that they have no objection to the proposed Scheme.

20. That the Applicant Companies to file Affidavits of Service respectively, with the Registry proving dispatch of notices to creditors and regulatory authorities as stated above, and report to this Tribunal that the directions have been duly complied with.

21. Ordered accordingly.

